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Casenotes

THE FEDERAL GOVERNMENT: FINALLY PAYING ITS ENVIRONMENTAL DUES: *STATE OF OHIO V.* *UNITED STATES DEPARTMENT OF* *ENERGY*

I. INTRODUCTION

During the past few decades, the United States government has vigorously sought the imposition of civil penalties on polluters by enacting a number of laws to protect the environment.¹ The Resource Conservation and Recovery Act (RCRA),² in particular, was enacted to establish a basic hazardous waste management system. RCRA also provides authority to specifically encourage the conservation and recovery of valuable materials and energy.³ It is alarming that, during this age of increasing fed-

1. Axline, Barnett, Bonine, Oates & Skillman, *Stones for David's Sling: Civil Penalties in Citizen Suits Against Polluting Federal Facilities*, 2 J. ENVTL. L. & LITIGATION 1, 44-45 (1987) [hereinafter Axline, *Stones for David*]. The Resource Conservation and Recovery Act (RCRA) was enacted in response to the environmental emergencies created by the improper disposal of hazardous waste. See Note, *How Well Can States Enforce Their Environmental Laws When the Polluter is the United States Government*, 18 RUTGERS L.J. 123, 124 (1986) [hereinafter Note, *How Well Can States Enforce*]. The Environmental Protection Agency (EPA) is responsible for promulgating the regulations which enforce the specific RCRA provisions. *Id.* at 124. The EPA then requires the states to set up regulatory programs to monitor these federal standards. However, the states only gain full control over their prospective regulatory programs after the EPA has given them federal approval. *Id.* In theory, the states function in lieu of the EPA in enforcing the standards set under RCRA. Even federal facilities are required to comply with state programs. *Id.* However, federal facilities have successfully hidden behind the shield of sovereign immunity from the laws that many states are desperately trying to enforce. *Id.* at 123.

2. Resource Conservation and Recovery Act §§ 1002-9010, 42 U.S.C. §§ 6901-6991 (1988) (RCRA was enacted in 1976 as amendment to Solid Waste Disposal Act of 1965, Pub. L. No. 98-272, 79 Stat. 992 (1965)).

3. Generally, the purpose of RCRA is to identify specific hazardous wastes, to implement federal requirements for dealing with hazardous wastes, and to enforce requirements by demanding that hazardous waste facilities conform with environmental standards. States across the country established agencies to implement RCRA standards and have thus become critical in the regulation and enforcement of RCRA requirements. H.R. REP. NO. 141, 101st Cong., 1st Sess. 5 (1989) [hereinafter H.R. REP. NO. 141]. The EPA cannot do it alone. *Id.* By imposing penalties for present and past violations, state and federal enforcement officials are demanding compliance of federal facilities. *Id.* Section 3005 of RCRA requires that any facility which treats, stores, or disposes of hazardous

eral enforcement, the government has become one of the major polluters of hazardous waste.⁴

The United States Department of Energy and the Department of Defense generate approximately 20 million tons of hazardous waste annually.⁵ Testimony given by the Environmental Protection Agency (EPA), the State Attorney General, and state environmental protection agencies has strongly indicated that federal facilities are perhaps the worst violators of environmental protection laws.⁶ However, until 1990 and the monumental decision of the Sixth Circuit in *Ohio v. Department of Energy*,⁷ the federal government had successfully hidden behind the shield of sovereign immunity from the laws which it encouraged states to implement.⁸

In 1988, the State of Ohio brought action against the Department of Energy (DOE) seeking civil penalties under RCRA for the DOE's alleged improper disposal of hazardous wastes, its release of radioactivity into the air, water, and soil, and its pollution of surface and ground water at its Fernald facility in Fernald, Ohio.⁹ Because the facility processed uranium for the development of nuclear weapons, it generated both radioactive and non-radioactive hazardous waste.¹⁰ Thus, the issue was whether federally-

waste obtain a permit from the EPA or from a state authorized by the EPA to operate its own hazardous waste program in lieu of the federal government. 42 U.S.C. § 6925. Section 3005(c) authorizes the EPA or an authorized state program to issue such a permit only upon determining that the facility is conforming to the standards set by the EPA. *Id.* § 6925(c).

4. See generally Note, *How Well Can States Enforce*, *supra* note 1; Note, *Assuring Federal Facilities Compliance with the RCRA and Other Environmental Statutes: An Administrative Proposal*, 28 WM. & MARY L. REV. 513, 515-17 (1987).

5. See H.R. REP. NO. 141, *supra* note 3, at 3. During President George Bush's campaign in 1988, he acknowledged the serious environmental violations of federal facilities, stating, "[u]nfortunately, some of the worst offenders are our own federal facilities. As President, I will insist that in the future federal agencies meet or exceed environmental standards: The government should live within the laws it imposes on others." *Id.*

6. *Id.*

7. 904 F.2d 1058 (6th Cir. 1990), *cert. granted*, 111 S.Ct. 2256 (U.S. June 3, 1991) (No. 90-1341, 90-1517).

8. The United States has successfully used the defense of federal sovereign immunity to escape citizen suits for civil penalties under section 6001 of RCRA. 42 U.S.C. § 6961. For a discussion of case history involving section 6001, see *infra* text accompanying notes 20-53.

9. *Ohio*, 904 F.2d at 1059.

10. *Id.* The Fernald facility is situated on 1050 acres of government owned land. *Id.* The facility does not have a nuclear reactor, but processes performed there generate hazardous waste. *Id.* The Fernald plant has had a "long history of environmental violations and concealment of those violations." See H.R. REP. NO. 141, *supra* note 3, at 4. The United States Department of Energy (DOE), the

The court initially recognized that the plain language of section 6001's general waiver provision subjected the federal government to the requirements of federal, state, and local laws.⁷⁰ Yet, the question remained whether the "requirements" included civil penalties.⁷¹ The court then examined the legislative history and recognized that RCRA was enacted in response to the Supreme Court's decisions in *Hancock* and *EPA v. California*.⁷² The court recognized that Congress's use of the specific language of "all requirements" supported the conclusion that Congress intended the federal government to be subjected to civil penalties under section 6001.⁷³ However, the court was careful to point out "two complications."⁷⁴

The first complication was identified when the court compared the language in section 6001⁷⁵ to the language of an analogous pollution control statute, the Clean Water Act (CWA).⁷⁶ Section 313 of CWA provides that federal facilities would be subjected to "all requirements" and "sanctions . . . to the same extent as any other nongovernmental entity," but that the United States would only be liable for "those civil penalties arising under federal law" ⁷⁷ Because this language adequately protected the United States from claims arising under state law, the court found that the term "requirements" had included civil penalties.⁷⁸ The court noted, however, that section 6001 of RCRA

70. *Id.* at 1062. For the pertinent text of section 6001, see *supra* text accompanying note 19.

71. *Ohio*, 904 F.2d at 1062. The Sixth Circuit found that there were indications in the waiver provision that Congress intended to waive sovereign immunity. However, the court felt that the waiver was "not stated clearly enough to be recognized." *Id.* For various interpretations of section 6001's waiver provision, see *supra* text accompanying notes 34-53.

72. *Id.* at 1063. For a discussion of the *Hancock* and *EPA v. California* cases, see *supra* notes 22-27 and accompanying text. For a discussion of Congress's reaction to these Supreme Court decisions, see *supra* notes 28-30 and accompanying text.

73. *Ohio*, 904 F.2d at 1062.

74. *Id.*

75. For the text of section 6001 of RCRA, see *supra* text accompanying note 19.

76. For the pertinent text of CWA, see *supra* note 11. For the background of CWA as it compares to section 6001 of RCRA, see *supra* note 11.

77. 33 U.S.C. § 1323(a); see *supra* note 65. The Sixth Circuit noted that both CWA and RCRA were "umbrella" acts for the state water pollution laws. However, the court distinguished CWA from RCRA in that CWA contained "language to protect the United States from suits under unapproved state laws." *Ohio*, 904 F.2d at 1063. For an analysis of the court's comparison of CWA and RCRA, see *infra* text accompanying notes 100-105.

78. *Ohio*, 904 F.2d at 1063.

contained no language of limitation which would have protected the United States against random state claims.⁷⁹ It reasoned that if section 6001 was interpreted as waiving sovereign immunity for civil penalties, the United States would have become vulnerable to any claim arising under federal or state law.⁸⁰ The court further reasoned that if "all requirements" in section 6001 included sanctions such as civil penalties, the later discussion of sanctions in the statute would be superfluous.⁸¹ Therefore, the court found that the inconsistency between CWA and section 6001 of RCRA made "any waiver less than clear."⁸²

The second complication was identified when the court examined the term "injunctive relief" found in section 6001.⁸³ The court focused on two sentences of the general waiver provision: "Each department . . . of the Federal Government . . . shall be subject to . . . all . . . requirements, both substantive and procedural (including . . . any provisions for *injunctive relief and such sanctions as may be imposed . . . to enforce such relief*)," and; "the United States . . . shall [not] be immune . . . from any . . . sanction . . . with respect to the enforcement of any such *injunctive relief*."⁸⁴

The court stated that injunctive relief was referred to twice in the statute without any mention of monetary relief or civil penalties⁸⁵ and concluded that Congress omitted the "civil penalties too neatly to be an accident."⁸⁶ The court therefore found that "requirement" in RCRA section 6001 did not include civil penalties.⁸⁷

The court, addressing the citizen suit provision of RCRA, recognized that the United States *could* be sued for civil penalties

79. *Id.* The Supreme Court failed to recognize that the President's federal exemption power provided a certain degree of protection. For a discussion of the President's exemption power, see *infra* text accompanying notes 104-05.

80. *Id.*

81. *Id.* For text of section 6001, see *supra* text accompanying note 19.

82. *Ohio*, 904 F.2d at 1063.

83. *Id.* The court recognized that Congress's specific use of the term "injunctive relief" indicated its intent to limit the waiver of sovereign immunity for civil penalties to the enforcement of such injunctive relief. *Id.*

84. RCRA § 6001, 42 U.S.C. § 6961 (emphasis added).

85. See *Ohio*, 904 F.2d at 1065.

86. *Id.* The court concluded that because Congress failed to mention whether civil penalties for past violations were included in the waiver provision, Congress must have intended to limit the use of civil penalties only where injunctive relief must be enforced. *Id.* at 1063.

87. *Id.*

under section 7002.⁸⁸ The court rejected the theory that because "person" was defined differently in section 7002 from the general definition in section 1004(15), Congress's intent was ambiguous.⁸⁹ Therefore, when interpreting section 7002's citizen suit provision, the court found that "person" should be defined by section 7002, not by the general definition within section 1004(15).⁹⁰ The court emphasized the fact that in the citizen suit provision, "person" was expressly defined as "including the United States" and that it was this same section which specifically incorporated the civil penalties' provision.⁹¹

The court also found that the legislative history supported the theory that Congress intended to subject federal facilities to the same requirements and sanctions as private entities.⁹² Because Congress had serious concerns regarding the environmental consequences of the government's 20,000 hazardous waste facilities, it demanded that such facilities "provide national leadership in dealing with solid waste and hazardous waste disposal systems."⁹³ Therefore, the court found that a congressional waiver of sovereign immunity for civil penalties was consistent with the purpose of RCRA.⁹⁴

Judge Guy dissented from the majority's conclusion that "person" could be defined under section 7002 as including the United States⁹⁵ by arguing that if Congress intended the United States to be included in the definition of "person," Congress would have expressly stated so in section 3008.⁹⁶ Therefore,

88. *Id.* at 1064-65. For the pertinent text of section 7002, see *supra* text accompanying note 54.

89. *Ohio*, 904 F.2d at 1064-65. For the pertinent text of section 7002, see *supra* text accompanying note 54.

90. *Ohio*, 904 F.2d at 1064-65.

91. *Id.* at 1065.

92. *Id.* The Sixth Circuit quoted from a Senate Committee Report from the 98th Congress to show that the Senate intended to waive federal sovereign immunity for civil penalties. *Id.*

93. *Ohio*, 904 F.2d at 1065 (quoting H.R. REP. NO. 1491, 94th Cong., 2d Sess. 3, reprinted in 1976 U.S. CODE CONG. & ADMIN. NEWS 6238, 6241). After discussing similarities among RCRA, the Clean Water Act, and the Clean Air Act, the Senate report provided that "[a]ll Federal Agencies would be required to comply with State and local controls on solid waste and hazardous waste disposal as if they were private citizens." S. REP. NO. 988, 94th Cong., 2d Sess. 24 (1976). This included "compliance with all substantive and procedural requirements, and specifically any requirement to obtain permits." *Id.*

94. *Ohio*, 904 F.2d at 1065.

95. *Id.* at 1069.

96. *Id.*; For text and case history of section 7002, see *supra* notes 54-66 and accompanying text.

Judge Guy concluded that federal facilities could successfully use the shield of sovereign immunity in defense of citizen suits for civil penalties.⁹⁷

V. ANALYSIS

A. Section 6001: The General Provision

In reviewing the *Ohio* court's opinion, the Sixth Circuit correctly held that section 6001 fails to show clear congressional intent to waive federal sovereign immunity for civil penalties beyond injunctive enforcement.⁹⁸ Although "sanctions" would normally encompass enforcement mechanisms such as civil penalties, the "sanctions"—to which section 6001 refers—appear to be only those penalties imposed by the court for the violation of an injunction.⁹⁹ However, the basis for many of the Sixth Circuit's conclusions in *Ohio* requires a more detailed examination.

In support of the proposition that RCRA section 6001 fails to subject federal facilities to civil penalties for non-injunctive violations of state pollution laws, the Sixth Circuit compared the wording of CWA waiver provision, which clearly subjects federal facilities to civil penalties, to the wording of RCRA waiver provision.¹⁰⁰ The Sixth Circuit accurately stated that CWA contains a waiver provision which expressly limits the waiver of sovereign immunity "to those civil penalties arising under federal law."¹⁰¹ The court used this language of limitation in support of its conclusion that Congress had waived sovereign immunity for civil penalties under CWA. Such language provides the United States with adequate protection from unfounded claims which do *not* arise under federal law.¹⁰² The Sixth Circuit then concluded that Congress could not have intended to waive sovereign immunity under section 6001 because it failed to include comparable language of limitation.¹⁰³ However, this conclusion is inaccurate.

97. *Ohio*, 904 F.2d at 1068-69.

98. *Id.*

99. The parenthetical phrase in section 6001 provides in pertinent part, "[I]ncluding any requirement for . . . injunctive relief and such sanctions as may be imposed by a court to enforce such [injunctive] relief" 42 U.S.C. § 6961.

100. *Ohio*, 904 F.2d at 1068-69.

101. *Id.*

102. *Id.*

103. RCRA § 6001, 42 U.S.C. § 6961; see Axline, *Stones for David*, *supra* note 1, at 39. Congress was careful to point out where the waiver of sovereign immunity for civil penalties would not apply under section 6001 by providing, "The President may exempt any solid waste management facility . . . from compliance with such a requirement if he determines it to be in the paramount interest of

Congress expressly stated within section 6001 that the "President may exempt any solid waste management facility . . . from compliance with" the controlling requirements.¹⁰⁴ This language evidences congressional intent to limit its broad waiver by granting a presidential exemption. Therefore, section 6001 of RCRA contains sufficient language to protect the United States from suits arising from "unapproved state claims" even though the wording of the limitation differs from that of CWA.¹⁰⁵

The *Ohio* court's support of the Ninth Circuit's reasoning in *Washington* also needs further explanation.¹⁰⁶ The Ninth Circuit's view of civil penalties as a means of "enforcing requirements" rather than as "requirements"¹⁰⁷ themselves closely resembles the Supreme Court's distinction in *Hancock* between substantive standards and the means of enforcing those standards.¹⁰⁸ The *Ohio* court fails to distinguish the Ninth Circuit's interpretation in *Washington* from the Supreme Court's interpretations in *Hancock* and *EPA v. California*, the latter two cases being flatly rejected by Congress.¹⁰⁹

The issue of whether RCRA section 6001 subjects federal facilities to civil penalties for violations of state pollution laws is, unfortunately, further clouded by legislative history. The House Committee has specifically endorsed the Ohio and Maine District Courts' holdings that the state *could* recover civil penalties against polluting federal facilities.¹¹⁰ The House stated that the courts correctly interpreted section 6001 as subjecting federal facilities to "all of the same substantive and procedural requirements, including enforcement requirements and sanctions, such as civil penalties, that state and local governments and private companies

the United States to do so." 42 U.S.C. § 6961. See Axline, *Stones for David*, *supra* note 1, at 39.

104. 42 U.S.C. § 6961.

105. For a discussion of President Bush's view on federal sovereign immunity, see *supra* note 5. See Axline, *Stones for David*, *supra* note 1, at 39.

106. For a discussion of *Washington*, see *supra* notes 45-48 and accompanying text.

107. See *Washington*, 872 F.2d at 879.

108. *Hancock*, 426 U.S. at 183-84; *EPA v. California*, 200 U.S. at 223. See Axline, *Stones for David*, *supra* note 1, at 38.

109. For discussion of Congress's reaction to the companion cases, see *supra* text accompanying notes 29-31. The Supreme Court in *Hancock* distinguished between substantive and procedural requirements and held that the waiver did not include procedural requirements such as state permits. *Hancock*, 426 U.S. at 182-83.

110. See H.R. REP. NO. 141, *supra* note 3, at 5.

are subject to.”¹¹¹

Although the historical background of RCRA section 6001¹¹² suggests that Congress intended to subject polluting federal facilities to civil penalties for violations *independent* of court-ordered injunctive relief, the plain language of the statute contradicts this interpretation. RCRA section 6001 subjects federal facilities to “requirements . . . (including . . . any provisions for injunctive relief and such sanctions as may be imposed . . . to enforce such [injunctive] relief.)”¹¹³ The specific wording of this statute indicates that even *if* the term “requirements” was to include civil penalties, those penalties could not be awarded until a federal facility was in violation of an injunction. The plain language of section 6001 not only fails to authorize the imposition of civil penalties for past violations, but seems to expressly reject it. It is important to note that “injunction” was referred to twice in the statute.¹¹⁴ When a conflict exists between the legislative history and the plain language of a statute, the court is bound by the language of the statute.¹¹⁵ Therefore, the Sixth Circuit properly concluded that Congress failed to provide clear and unambiguous consent to the use of civil penalties beyond the enforcement of injunctive relief.¹¹⁶

B. Section 7002: The Citizen Suit Provision

The citizen suit provision of section 7002, however, does provide clear and unambiguous language waiving federal sovereign immunity for civil penalties. The Sixth Circuit correctly held that RCRA section 7002 unequivocally subjects polluting federal facilities to civil penalties.¹¹⁷ Section 7002 refers to the civil penalties provision of section 1004(15) in order to specify the *type* of penalties to be imposed on federal facilities in violation of RCRA. It does not refer to section 1004 to redefine the term “person.”¹¹⁸ If section 7002 is interpreted as excluding the United States from the imposition of civil penalties, then Congress’s ex-

111. *Id.*

112. For a discussion of the legislative history of section 6001, see *supra* text accompanying notes 20-31.

113. For the text of section 6001, see *supra* text accompanying note 19.

114. *Ohio*, 904 F.2d at 1063.

115. *Kosak v. United States*, 465 U.S. 848, 853 (1984); *Church of Scientology v. United States Dep’t of Justice*, 612 F.2d 417, 421 (9th Cir. 1979).

116. See *Ohio*, 904 F.2d at 1063.

117. *Id.* at 1064.

118. Axline, *Stones for David*, *supra* note 1, at 33-34.

press inclusion of the United States in the definition of "person" would be meaningless.¹¹⁹ The plain language of section 7002 makes it clear that Congress intended to permit an action for civil penalties to be brought against the United States even though the extent of those penalties would be defined under sections 3008(a) and (g).¹²⁰

Had Congress intended "person" to be defined by only the general definition of section 1004(15), a number of RCRA provisions would become confusing, if not meaningless.¹²¹ Federal facilities in violation of RCRA would be exempt from any enforcement unless the United States is included in the term "persons."¹²²

For example, any "person" who owns or operates a facility which generates hazardous waste must obtain a permit under section 3005(a).¹²³ If the United States was excluded from the term "person," then no federal facility would be procedurally required to obtain a permit. Yet, Congress and the Supreme Court have agreed that federal facilities must obtain a permit under RCRA.¹²⁴

Another example of the problems inherent in not including the United States in the definition of "person" is found in section 3010(a) of RCRA. Section 3010(a) requires "any person" who generates hazardous waste to notify the EPA of the location and

119. *Id.*

120. 42 U.S.C. § 6972(a), (c).

121. Axline, *Stones for David*, *supra* note 1, at 33-34. The Supreme Court has stated, "[i]t is axiomatic that all parts of an Act 'if at all possible, are to be given effect.'" *F.A.A. Adm'r v. Robertson*, 422 U.S. 255, 261 (1975) (quoting *Weinberger v. Hynson*, 412 U.S. 609, 633 (1973)). For examples of RCRA provisions that would cease to make sense if the United States was not included in the definition of "person," see *infra* text accompanying notes 123-30.

122. Axline, *Stones for David*, *supra* note 1, at 34.

123. 42 U.S.C. § 6925(a). Axline, *Stones for David*, *supra* note 1, at 34.

124. After the *Hancock* and *EPA v. California* companion cases, Congress rejected the view that polluting federal facilities should be subjected to only "standards" rather than substantive and procedural requirements. See *supra* text accompanying notes 29-30. In RCRA, CWA and CAA, Congress used various wording to reach the same goal of subjecting federal polluters to the same treatment as any other "nongovernmental entity." RCRA § 6001, 42 U.S.C. § 6961. CWA provides that polluting facilities are to be treated the "same" as "any nongovernmental entity." CWA § 313(a), 33 U.S.C. § 1323(a). CAA subjects federal polluters to requirements and sanctions "to the same extent as any nongovernmental entity." CAA § 118(a), 42 U.S.C. § 7418(a). The history of these statutes shows repeated effort on the part of Congress to expose federal facilities to the same requirements and sanctions as other hazardous waste facilities. See Axline, *Stones for David*, *supra* note 1, at 22-23.

the nature of the activity.¹²⁵ If the United States was not included in the definition of "person," federal facilities would be free to ignore this RCRA provision. Citizens would be unable to sue polluting federal facilities because "person" would only encompass nongovernmental agencies and thus would make the specific inclusion of the United States in section 7002 futile.¹²⁶

In addition, the exclusion of the United States from the definition of "person" would completely void at least one RCRA provision.¹²⁷ Under section 3007(c), the EPA is required to annually inspect *federal* facilities to ensure their compliance with RCRA requirements involving the treatment, storage, and disposal of hazardous waste.¹²⁸ The general provision of section 3007(a), however, imposes requirements on "any person" who generates hazardous waste.¹²⁹ The Senate Committee Report evidences that Congress's intentions are in direct conflict with this interpretation. Congress has clearly indicated that the EPA's inspection of federal facilities is a mandatory and nondiscretionary duty. Yet, section 3007 applies only to "persons," thus, federal facilities would be immune from RCRA inspection if the term "person" excluded the United States.¹³⁰

Therefore, a restrictive reading of section 7002 would lead the court to conclude that a federal facility may blatantly violate federal pollution laws as well as state pollution laws. Such a reading would completely negate one of the major purposes behind RCRA's enactment—to have federal agencies provide "national leadership" in dealing with environmental emergencies which re-

125. 42 U.S.C. § 6930(a). Section 3010(a) provides in pertinent part: "[A]ny person generating or transporting such substance or owning . . . a facility for treatment, storage, or disposal of such substance shall file with the Administrator . . . a notification stating the location and general description of . . . hazardous wastes handled by such persons." *Id.* See Axline, *Stones for David*, *supra* note 1, at 34.

126. Axline, *Stones for David*, *supra* note 1, at 34. See *supra* note 124.

127. Axline, *Stones for David*, *supra* note 1, at 34.

128. 42 U.S.C. § 6927(c). Section 3007(c) provides in pertinent part: "[T]he Administrator shall . . . undertake on an annual basis a thorough inspection of each facility for the treatment, storage, or disposal of hazardous waste which is owned or operated by a federal agency to enforce its compliance with . . . regulations promulgated thereunder." *Id.* See Axline, *Stones for David*, *supra* note 1, at 34.

129. *Id.* at § 6927(a). Section 3007(a) provides in pertinent part: "[A]ny person who generates, stores, treats, . . . hazardous wastes shall . . . furnish information relating to such wastes . . ." *Id.*; see Axline, *Stones for David*, *supra* note 1, at 34.

130. See *supra* note 125; see Axline, *Stones for David*, *supra* note 1, at 34.

sult from the improper disposal of hazardous waste.¹³¹

Because the language defining "person" in section 1004(15) is in conflict with the language defining "person" in section 7002, an examination of the legislative history is critical. The Ninety-eighth Congress stated that the citizen suit provision "specifically authorized a suit against any 'person, including the United States'" for "any appropriate civil penalties under sections [3008(a) and (g)]."¹³² Therefore, when referencing sections 3008(a) and (g), "person" is most sensibly defined by section 7002 as including the United States.

The legislative history of RCRA section 7002 evidences Congress's intent to apply a broader definition of the term "person" than is provided in section 1004(15).¹³³ In fact, an examination of other RCRA provisions suggests that Congress has itself interpreted the term "person" to include the United States. If Congress did not interpret "person" as including the United States, then the purpose of section 7002, as well as other RCRA sections, would be eviscerated.¹³⁴ Therefore, the Sixth Circuit correctly interpreted "person" to include the United States and, in doing so, properly subjected federal facilities in violation of RCRA to civil penalties under section 7002.¹³⁵

VI. IMPACT

In conclusion, the Sixth Circuit's holding in *Ohio* will have a dramatic effect on the attitudes of federal facilities with respect to environmental law. Until the *Ohio* decision, polluting federal facilities had no reason to conform to environmental requirements because they could effectively hide behind the shield of sovereign immunity.¹³⁶ The Sixth Circuit's decision will no doubt serve as a powerful incentive for facilities to heed environmental standards.

Of course, the practicality of imposing civil penalties upon federal facilities comes into question when those civil penalties

131. S. REP. NO. 988, 94th Cong., 2d Sess. 24 (1976).

132. See *supra* notes 54-58 and accompanying text.

133. Axline, *Stones for David*, *supra* note 1, at 34.

134. *Id.*

135. See *Ohio*, 904 F.2d at 1064-65. See Axline, *Stones for David*, *supra* note 1, at 34.

136. Although the issue of sovereign immunity has been included in major environmental statutes, the courts have refused to grant waivers of this immunity to persons seeking penalties against polluting federal facilities. See Note, *How Well Can States Enforce*, *supra* note 4, at 143.

are awarded not to the plaintiff, but to the federal treasury.¹³⁷ Nevertheless, the penalties will come directly from each facility's budget. The federal facilities will be forced to divert funds budgeted for designated projects to cover their fines. The imposition of civil penalties will threaten closer congressional scrutiny of annual budget proposals.¹³⁸ If violating facilities lack sufficient funds to cover civil penalties, they will have to look to Congress for additional resources.¹³⁹ These facilities will be forced to justify their need for increased funds and Congress will become all too aware of facilities' repeated violations. Federal facilities will therefore be encouraged to promote strict self-regulation standards to combat these potential conflicts with Congress.

Lastly, the imposition of civil penalties will not only compel compliance, but also deter future violators. The federal government should have no less a duty to preserve and protect the environment than a private citizen or nongovernmental agency. The imposition of civil penalties would, therefore, serve as a reminder of the importance of environmental laws. As federal facilities begin to feel both the effects of civil penalties at the core of their budgets, and mounting congressional and public pressure in response to repeated violations, they will no longer ignore environmental emergencies. The government will be forced to pay its environmental dues—like any other violator.

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137. Section 3008(g) provides, "[a]ny person who violates any requirement of this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation." 42 U.S.C. § 6928(g). See Axline, *Stones for David*, *supra* note 1, at 39-40.

138. Axline, *Stones for David*, *supra* note 1, at 41-42.

139. *Id.* at 33-34.